

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

FORSTER WOODS <i>et al.</i> , ¹)	
)	
Petitioners,)	
)	
v.)	
)	
KING COUNTY,)	ORDER OF DISMISSAL
)	
Respondent)	[DIVISION I REMAND OF
)	CPSGMHB Case No. 01-3-
and)	0008c:Yerkes portion of <i>Forster</i>
)	<i>Woods</i>]
ROBERT S. YERKES,)	
)	
Intervenor.)	
)	

I. BACKGROUND

On November 6, 2001, the Board issued its Final Decision and Order (**FDO**) in *Forster Woods, et al., v. King County (Forster Woods)*, CPSGMHB Case No. 01-3-0008c. Robert S. Yerkes intervened on behalf of the County. As to the Yerkes portion of the case, the Board found that the County rezoning of the Yerkes property from RA-10 to RA-5 was inconsistent with King County Plan Policy R-205, and did not comply with the consistency requirements of RCW 36.70A.040(3) and .130(1).

Mr. Yerkes filed an appeal of the Board's FDO in King County Superior Court. The Superior Court *upheld* the Board's FDO, holding that the Policy R-205 was properly interpreted and applied.

Mr. Yerkes then appealed to the Court of Appeals, Division I. On May 3, 2004, the Court of Appeals *reversed* the Board's decision on one legal issue and remanded the action for further proceedings on a legal issue not addressed in the original FDO.

On June 10, 2004 the Board received a copy of the Court of Appeals Mandate to King County Superior Court.

¹ The City of North Bend, represented by Mr. Michael R. Kenyon, was also a Petitioner in this matter.
1308c Forster Woods (December 7, 2004)
**01-3-0008c Order of Dismissal [Division I Remand
of CPSGMHB Case No. 01-3-0008c – Yerkes Portion]**
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On August 18, 2004, the Board received “Order Remanding to Central Puget Sound Growth Management Hearings Board,” from King County Superior Court.

On August 19, 2004 the Board issued “Notice of Pre-Remand Hearing Conference for Division I Remand of CPSGMHB Case No. 01-3-0008c [*Yerkes* portion of *Forster Woods*]” (**NPRH**). The NPRH set September 16, 2004 as the date for the conference.

On September 13, 2004, at the request of the parties, the Board issued “Order Rescheduling Pre-remand Hearing Conference for Division I Remand of CPSGMHB Case No. 01-3-0008c [*Yerkes* portion of *Forster Woods*].” The Pre-Remand Hearing Conference (**PRHC**) was rescheduled for October 14, 2004.

On September 14, 2004, the Board received a letter from the attorneys representing Forster Woods Homeowners Association and Friends of Neighbors of Forster Woods indicating that these Petitioners “do not wish to participate further in these proceedings, and therefore do not plan to attend the conference or submit any further briefs or memoranda.”

On October 14, 2004, the Board held the PRHC at the Board’s offices. Board Member Ed McGuire convened the conference. Board Members Bruce Laing and Margaret Pageler also attended the conference. Duana Koloušková appeared for Mr. Yerkes. John Briggs represented King County. Michael Kenyon represented Petitioner North Bend. Robert S. Yerkes, Thelma Knight and Lana Floyd also attended.

Later that day, the Board issued the “Pre-Remand Hearing Order for Division I Remand of CPSGMHB Case No. 01-3-0008c [*Yerkes* portion of *Forster Woods*].” This Order required the parties to submit copies of the original briefs and established a supplemental briefing schedule for the remaining parties, set the hearing date and identified the sole issue [Legal Issue 3²] to be addressed by the Board.

On October 18 & 19, 2004, the Board received the original briefing for the *Forster Woods* matter. The submittals included: 1) “Forster Woods Homeowners’ Association and Friends and Neighbors of Foster Woods’ Opening Brief” (**FW PHB**); “King County’s Prehearing Brief on Legal Issues Raised by Forster Woods and the City of North Bend” (**Co. Response**); and “Intervenor Yerkes Prehearing Brief” (**Yerkes Response**).

On October 25, 2004, the Board received a letter from Mr. Kenyon indicating that Petitioner North Bend did not intend to file a supplemental brief nor attend the hearing scheduled for December 6, 2004.

None of the parties submitted supplemental briefing.

² *Legal Issue No. 3. Does King County Ordinance 14044 violate RCW 36.70A.060 because map amendments 23 . . . do not assure that the use of lands adjacent to forest resource lands shall not interfere with the continued use of such lands?*

On December 6, 2004, the Board convened the Remand Hearing at the Board's Offices. No Petitioners appeared at the hearing. Duana Koloušková appeared for Mr. Yerkes. John Briggs represented King County. Robert S. Yerkes also attended. The Remand Hearing convened at 10:00 and adjourned at 10:15.

After introductions, Intervenor and Respondent moved that the matter be dismissed for lack of prosecution by the Petitioners and failure to attend the Remand Hearing. The Board indicated it would take the motion under advisement and issue an Order within a day or two.

II. DISCUSSION

While the Board agrees that neither Petitioner provided supplemental briefing nor attended the remand hearing, thereby providing a basis for dismissal, the Board nonetheless reviewed the prior briefing submitted by the parties regarding Legal Issue 3. The Board's review revealed that Legal Issue 3 was not specifically briefed by Petitioner.

However, under Legal Issue 2 (*sic* 3?), there is a brief conclusory paragraph stating, "Rezoning of the Yerkes property to R-5 doubles the allowable density adjacent to the Forest Production District and is inconsistent with the GMA's requirement to protect designated forest production lands from encroaching uses and is inconsistent with the Comprehensive Plan's policy that very low densities are 'essential.'" FW PHB, at 25-26.

In response, the County argues that neither the GMA nor the County's Plan requires R-10 zoning adjacent to forest lands to protect those lands from encroachment. Co. Response, at 16. Additionally, the County notes that the P-suffix condition [requiring the clustering of 16 proposed lots on 30 acres with a 50 acre buffer of permanent open space] will ensure that the use of the Yerkes property will not encroach or interfere with the use of the forest protection district. *Id.*, at 17. Yerkes concurs in the County's response on this issue. Yerkes Response, at 5-6.

Review of the conclusory argument presented by Petitioner, and the County and Yerkes' response, leads the Board to find and conclude that Petitioners **failed to carry the burden of proof** in demonstrating that the redesignation of the Yerkes property [Amendment 23] would interfere with the continued use of adjacent forest resource lands. Therefore the Board **dismisses** the remaining Legal Issue in this matter.

III. ORDER

Based upon review of the original briefs and materials submitted by the parties, the GMA, the Board's Rules of Practice and Procedure, prior decisions of this Board and other Growth Management Hearings Boards, case law, and having deliberated and considered the matter, the Board enters the following ORDER:

- Petitioners **failed to carry the burden of proof** in demonstrating that the redesignation of the Yerkes property [Amendment 23] would interfere with the continued use of adjacent forest resource lands.
- Legal Issue 3, the sole remaining Legal Issue in this matter, is **dismissed with prejudice**. CPSGMHB Case No. 01-3-0008c [*Forster Woods, et al v. King County – Yerkes portion*] is **closed**.

So ORDERED this 7th day of December 2004.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Bruce C. Laing, FAICP
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member